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May 18, 2010

**BY HAND DELIVERY**

Daniel R. Elliott III  
Chairman – Surface Transportation Board  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

JUN 25 2010

Part of  
Public Record

RE: *Escanaba & Lake Superior Railroad Company – Abandonment Petition for  
Exemption – Line in Ontonagon and Houghton Counties, MI,  
STB Docket No. AB-415 (Sub-No. 2X)*

Dear Chairman Elliot:

In a letter dated May 7, 2010, and addressed to you and to the undersigned counsel for the Escanaba & Lake Superior Railroad Company ("ELS"), James R. Jessup, Ontonagon County Prosecuting Attorney, conveyed Ontonagon County's (the "County") opposition to ELS's proposed rail line abandonment which is the subject above-referenced proceeding. The County's letter does not appear to be a part of the formal docket in this case, and it has not been designated as a filing on the Board's website. Although not a formal filing in this proceeding, the County's three-page letter (including a single-page attachment) nevertheless contains statements and allegations significant enough to warrant a response in kind from ELS.

As ELS's April 9, 2010 abandonment petition for exemption (the "Petition") in this proceeding makes abundantly clear, the precipitating event prompting the railroad's request for Board authority to abandon the subject line segment was the closure of the Smurfit Stone Container Corporation's ("Smurfit") Ontonagon mill at the end of the line (Petition at 6-9.) The County's letter purports to offer an update on Smurfit's Chapter 11 reorganization proceedings, and, in the process, the County maintains that recent progress in the Smurfit bankruptcy case will facilitate possible sale of the mill for alternative industrial uses.

The County's letter goes on to state that the "Ontonagon Community has . . . received *an indication* from U.P. Steel, Inc. that they are interested in the mill properties" (County Letter,

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page two – emphasis added). The County appends to its letter a single-page letter from Richard W. Kauppila, Vice President Operations of U.P. Steel, Inc., addressed to Scott Frazer, the Village of Ontonagon's City Manager, in which letter Mr. Kauppila estimates that, if U.P. Steel were to acquire the Smurfit mill site and convert it to its own uses, U.P. Steel would "require 20-25 rail cars per day incoming and outgoing."

Unfortunately, neither the County letter nor the U.P. Steel letter attached to it provide any assurance of future industrial development of the mill site, and, worse, they give no assurance of future rail traffic sufficient to warrant either voluntary withdrawal or Board denial of ELS's Petition. The U.P. Steel letter, is neither a verified statement nor addressed to the Board as a formal filing, makes no traffic commitments whatsoever, and does not substantiate the efforts that U.P. Steel alleges to have taken toward the acquisition of the mill site from Smurfit. U.P. Steel's statements are far too speculative to be accorded any weight.

In fact, ELS has anticipated that opponents to the proposed rail line abandonment might advance such highly speculative arguments, full of promise but ultimately lacking the type of substance or commitment essential for the preservation of the line. For that reason, ELS stated in its Petition that the Board should weigh the claims contained in the County's recent correspondence in the same way that it has evaluated similar such non-committal future traffic speculation in other opposed abandonment proceedings (see Petition at 23-24, including footnotes 18 and 19).

When ELS counsel received the County's letter, it promptly contacted ELS for further information about U.P. Steel and its dubious future traffic prospects. ELS has informed us that it has never been contacted by U.P. Steel to discuss U.P. Steel's plans for the mill site or its rail service and rate needs. In fact, Mr. Thomas J. Klimek, ELS's vice president - marketing, who has been instrumental to ELS's Petition (see Petition, Exhibit E – Verified Statement of Thomas J. Klimek), has informed us that he has neither heard *of* U.P. Steel, nor ever heard *from* it. Quite obviously, U.P. Steel has taken no steps to negotiate service contracts with ELS or to discuss other arrangements that might make it financially feasible for ELS to suspend or to terminate its abandonment efforts.

For these reasons, ELS submits that the County's letter and the U.P. Steel letter attached to it offer wholly unsupported future traffic projections – which are not even in the formal record in this proceeding – that are far too speculative to be considered. In short, we would encourage you to adhere to past precedent which makes clear that future traffic projections should be presented to the Board in a formal filing, should be clearly supported by way of a verified statement, should reflect shipper efforts to discuss its service needs with the railroad, and ought to be supported by shipper contracts or other traffic commitments. For the same reason, ELS submits that hearings, as the County has requested, would serve no valid purpose, and would, in light of the case that ELS has already made in its Petition, be an unwise use of Board resources. Here, the County's claim that the possible future sale of the mill property would make it "VERY likely that E&LS will reap a large return for the continued existence of the rail line" (County Letter, page two) rings hollow indeed, because there is absolutely no guarantee that the mill will

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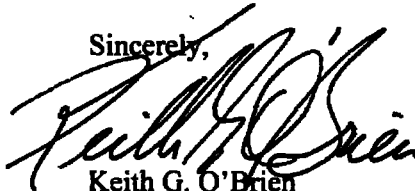
be purchased for future industrial purposes, and, even if such an event does occur at some point in the future, there is no guarantee that such industrial operations will require the use of the subject rail line. If the community sees the future prospect of rail service, then it has procedural options available to it to acquire the subject line or to subsidize continued operation, but it would appear that the community has neither the resources nor the intent to incur such obligations.

Finally, the County is utterly incorrect to claim that "[t]here are no entities known that would suffer should the STB deny or at least stay the abandonment" that ELS is seeking in the above-referenced proceeding. To make such a claim, the County must ignore the entire economic case that ELS has made in this proceeding demonstrating that abandonment is not only justified but necessary. ELS has demonstrated in great detail in the Petition the harms that will befall the railroad – including substantial avoidable losses and opportunity costs (Petition at 12-19) – if the Board does not promptly grant Petition. Moreover, ELS has supplied considerable justification for expedited consideration of the Petition (Petition at 24-25). ELS has explained that without the relief it is requesting in this proceeding, it faces the very real threat of system-wide service disruption, bankruptcy, and the possible involuntary liquidation of its assets (see Petition at 20-21, 24-25.) In fact, ELS anticipates that it will soon complete the one-time movement of the Smurfit mill coal stockpile (as discussed in the Petition at pages 7-8), which has afforded ELS a momentary respite from the mounting avoidable costs (losses) associated with continued operation of the line (as discussed in the Petition at pages 14-16).

For all of these reasons, and in light of your obligations to uphold the objectives of the Rail Transportation Policy at 49 U.S.C. 10101, ELS urges you not to vote to deny, not to recommend delaying action on, and not to propose holding hearings in connection with this abandonment proceeding.

Because of the significance of the discussion contained herein, ELS would not object to you adding this correspondence to the formal record in the above-referenced docket if you should wish to do so.

Sincerely,



Keith G. O'Brien

Counsel for Escanaba & Lake Superior  
Railroad Company

cc: James R. Jessup (County of Ontonagon)  
Robert Bach  
Thomas Klimek